

**TO: Chairman and Members**

**DATE: September 9, 2010**

**SUBJECT: AB 900 2007 Local Jail Construction Funding  
Program Regulations Revision**

**AGENDA ITEM: 6**

**ACTION: X  
INFORMATION:**

**RESOURCE PERSON: Charlene Aboytes**

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**Summary:**

This agenda item requests approval of the proposed modified regulations, approval to submit these regulations to the Office of Administrative Law (OAL), approval to begin the public comment period and appoint a chair for a public hearing.

**Background:**

The Title 15 AB 900 2007 Local Jail Construction Funding Program regulations were approved by the CSA Board at their September 2008 meeting and were effective upon filing with the Secretary of State on November 26, 2008. At their March 2010 meeting, the CSA Board approved revisions to those regulations that resulted from the issuance of the second Request for Proposals (Phase I – Round 2) and changes recommended by the OAL.<sup>1</sup> Those modifications have been submitted to the OAL. We anticipate that they will be effective in October 2010. Since then, several other issues arose that require amendments to the AB 900 regulations.

Section 1756, Disbursement of the Proceeds from the Lease-Revenue Bond Funds, requires counties to submit invoices for payment on a quarterly basis. This regulation has been amended to state that the frequency of invoicing shall be based on a schedule mutually agreed upon by CSA and the county. This will allow counties to submit for payment more frequently than quarterly allowing for more favorable "cash flow." This regulation also indicates that the county will be paid in arrears by the state with the last 20 percent of the state dollars withheld as security retention to be released upon compliance with all contract terms. Due to county budget constraints, conditionally awarded counties requested a reduction in the 20 percent retention to mitigate "cash flow" borrowing by the counties to pay contractors, since the county will be paid in arrears by the state. Public Contract Code Section 10261 specifies that not less than five percent of the contract price can be withheld until final completion and acceptance of the project. At their May 2010 meeting, the CSA Board approved this reduction in the retention amount. Section 1768, Project Modifications, was amended to require that summaries of change orders be submitted to the Authority with each invoice or progress report instead of quarterly to correspond with the proposed change in Section 1756. The proposed changes are shown in Attachment A.

These regulation amendments affect the AB 900 Local Jail Construction Funding Program once construction is underway. Because there is no immediate need for these changes, the regular rulemaking process will be used for these modifications. There will be a public comment period of at

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<sup>1</sup> These revisions are in the following Sections: 1730, Proposal; 1778, Definitions; and 1790, Corrections Standards Authority's Hearing Procedures.

least 45 days and one public hearing. CSA Board member Sheriff Ed Prieto has agreed to chair the public hearing. Staff will present the Board any recommended modifications to the regulations at a future CSA meeting.

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**Recommendation/Action Needed:**

Staff recommends:

1. The Board approve the regulations.
2. The Board authorize staff to submit the regulations to the Office of Administrative Law.
3. The Board authorize staff to begin the 45-day public comment process.
4. The Board appoint CSA Board member Sheriff Ed Prieto as chair for the upcoming public hearing.